SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 171.

A. Y. CHRISMAN ET AL., PLAINTIFFS IN ERROR,

v.

E. O. MILLER ET AL., DEFENDANTS IN ERROR.

REPLY BRIEF FOR PLAINTIFFS IN ERROR.

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FEDERAL QUESTION.

We beg leave to call the attention of the court to the case of Matthews *vs.* Zane, 4 Cranch, 654 (2 Law. Ed., p. 381), upon the proposition made by defendants in error that no Federal question appears. We cite Matthews *v.* Zane because it seems to be exactly in point, and it is not cited in our brief in reply to our opponents' motion to dismiss or affirm.

We wish to add the cases of—

Columbia W. Co. *v.* Columbia E. Co., 172 U. S., 521;
Murray *v.* Charleston, 6 Otto, 432;
Wolf *v.* Stix, 6 Otto, 541;
Murdoch *v.* City of Memphis, 20 Wall., 591;
Sayers *v.* Denny, 158 U. S., 180;
Belden *v.* Chase, 150 U. S., 691;
Stanley *v.* Schwalby, 162 U. S., 255,
And Garland and Ralston's Federal Practice, secs. 314, 315, 316, 317, and 324,

upon the point that if a Federal question appear by clear and necessary intendment it is sufficient.

Furthermore, the statement of the supreme court of California in its decision that all parties claim by virtue of locations made under the mineral laws of the United States (Record, p. 121), and the opinion of the Chief Justice of California (p. 127, bottom, and p. 128, top, Record) and the findings upon the question of discovery by Barieu and the plaintiffs in error at pages 122 and 124 of the record. These findings, together with those by the trial court, present nearly all of the questions which are raised by defendants in error, and show conclusively that their assertion that the case went off on some other point than Federal question is incorrect.

Therefore we contend, upon the foregoing and upon the authorities in our other brief upon the motion to dismiss or affirm, that nothing was decided by the State courts except that which necessarily was and is a Federal question.

What are the Uncontradicted Facts?

Miller wanted to get or control all the 40 acres of land sought by plaintiffs in error, but *also* the adjoining 440 acres. December 29, 1896, Miller prepared notices for the whole 480 acres (Record, p. 42, bottom of page).

Miller was willing to get the land any way, even by filings on existing oil wells, as Miller was the attorney for L. E. Hall (brother of W. F. Hall, who was with Miller the day of location, December 31, 1896), who filed August 26, 1896, a homestead on the northwest quarter of said section 20—homesteaded mineral land (Record, p. 44, bottom of page), and to quitclaim this homestead Miller was to get the rest of the section (Record, p. 45, top of page), and on December 15, 1896, just 14 days before his attempted location, Miller tried to get the half section as California State school land (Record, p. 45, bottom of page).

Miller also prepared the application of Smith to the State of California for the northeast quarter of section 20 (Record, top of p. 46), and, as counsel for defendants in error is eternally introducing alleged equities in his briefs, we want to further suggest that Miller never did a tap of work upon any of this ground himself, and that his conduct is in strange contrast with that of the Chrismans so far as effort, means, and endeavor go. That the Miller companies allied together should first get into the pay was fortune, and for all they put in they were getting out, but the Chrismans got nothing out.

Why not say they want the land, as we do, and stop talking about their outlays. The Standard Oil lays out great sums, but the income is proportionate.

Miller, as it appears from his own testimony, went from his office and home in Visalia on December 29, 1896, about one hundred miles, to Coalinga and Oil City (Record, p. 50, folio 91; Record, p. 42, folio 77). On December 31, 1896, from Oil City upon the land in controversy, to put up monuments and a notice of location; which done, Miller went off the land "and went back over to the cabin at Oil City, "where I had stayed the night before" (Record, p. 40, folio 72; Record, p. 41, folio 74), and then returned to Visalia (Record, p. 58, folio 105, Hall); and Miller testified that he was back over the land ten or fifteen times afterwards (Record, p. 43, near top of page).

Miller never did any work on the property and none was done until after September under his alleged title (Record, p. 42, top of page).

The defendant in error, Home Oil Company, leased from Miller in September, 1897. C. A. Canfield, manager for Home Oil Company, testifying for it, said no work had ever been done by it upon the ground claimed by plaintiffs in error (the Chrismans), but that the Chrismans had built some road, a derrick, two houses, and some other buildings on the ground claimed by them (Record, p. 62, folio 111),

and it appeared that a tunnel fifteen or twenty feet deep (p. 69, Record, Fearon; p. 75, Record, folio 135, Chrisman) and did the assessment work thereon for the years 1898 and 1899 (Record, p. 82, folios 148–9), and the affidavits of assessment work thereon appear at page 86 of the record and are *prima facie* evidence, and that it appears we went peaceably and quietly upon the ground, and the *nisi prius* court so declared in its so-called findings (Record, p. 24, subdivisions XII and XIII), and discovered oil, as stated in findings of the supreme court, of all of which there is positively no one word of contradiction.

Counsel for defendants in error seeks to foreclose our rights by a mistaken assumption of facts at page 68 of his brief, and following that misapplies authorities to incorrect facts.

Findings of Fact Conclusive, When?

We do not concede that findings of fact are conclusive upon this or any other appellate court unless they be findings of ultimate facts within the issue tendered by the complaint and there be evidence to support them or admissions made supplying the place of evidence.

This court certainly cannot be bound by what purport to be findings if made in the face of all the testimony or of admissions or stipulations of the parties or upon merely evidentiary propositions arrived at by applying a mistaken view of the law and being practically conclusions of law. We think the elementary rule deduced from all the authorities is that findings upon ultimate facts within the issue where there is substantial evidence, admissions, or stipulations to support the finding are conclusive, but not otherwise.

An appellate court will not reverse a lower court upon a conflict of evidence, even though the appellate court might view the evidence differently, and even though it would have decided differently had it acted in the place of the trial court.

But this court would certainly foreclose itself of all right of review if it should accept as conclusive so-called findings having no evidence to support them, or against stipulations or admissions of the parties made at or prior to the trial or against all of the evidence. That would be sacrificing substance to shadow.

Unless a so-called finding is based upon a presumption, evidence, admission, or default and within the issue, it is not a finding of fact, and therefore not the subject of consideration.

It is of no substance or effect.

Undoubtedly it is not a "finding of fact," but a *question of law.*

We understand the Supreme Court of the United States will look into the case and see what is the real substance and effect of the decision. It cannot be deprived of its right to review by accident, fraud, or mistake. It will look for itself. In McCullough *v.* Virginia (172 U. S., p. 116, bottom, and p. 117, top) it is said:

"It has been repeatedly held by this court that in reviewing the judgment of the courts of a State we are not limited to a mere consideration of the language used in the opinion, but may examine and determine what is the real substance and effect of the decision. * * * In other words, can it be that the mere language in which the State court phrases its opinion takes from or adds to the jurisdiction of this court to review its judgment? Such a construction would always place it in the power of a State court to determine our jurisdiction."

Also cases cited in the opinion at pp. 118–119.

In the present case counsel for the defendant in error seeks to conclude us by certain so-called findings of fact made by the trial court, and asks this court to assume that they are findings, when in truth and in fact most of them are but conclusions of law. Inadvertently, no doubt, in making his statement of said so-called findings at pages 3 to 7 of the

brief of defendants in error, certain pertinent phrases and clauses are omitted by counsel which materially alter the complexion of these so-called findings and make some of them in reality conclusions of law.

For instance, in speaking of the ninth so-called finding of fact (Record, p. 23) he omits the words "under and by virtue of the terms of said lease," and from the eighteenth (p. 26) "been in the exclusive possession." The omission of these words makes quite a difference as to possession. A paper possession is quite distinct from a physical occupancy. A *physical occupancy* is the basis of counsel's argument, and the authorities in support thereof are, *pedis possessio* cases. The substance of the decision of the *nisi prius* court is a paper possession and not an actual being on the land; therefore the elimination of the words stated might change that put as a conclusion to a fact and place a different aspect on the statement.

Again, the so-called finding number three has been changed in the statement of facts by omitting "under the title of the plaintiff" (Miller), and the ownership and title of the plaintiff (below) is shown by other of the so-called findings to be a paper one and not physical possession except as to part.

To illustrate: In so-called finding eight (Record, p. 23) it is stated that Miller and seven others did *make a mineral location by* posting a notice and *by* marking said location on the ground, and (finding XVII, Record, p. 25) that *thereby* it was then in the possession of Miller and seven others under and by virtue of their said location, and said land was not because thereof vacant or open to exploration. This is the plain reading of the so-called findings, because (in findings XIII and XIV, Record, p. 24) it is stated that the plaintiffs in error (Chrismans) on January 1, 1897, did enter upon a portion of said land, post a notice that he claimed the same for mining purposes, and did mark the said land, and (in finding XVII, Record, p. 25) it is impliedly stated

that work and labor was done by the Chrismans (plaintiffs in error) upon their claims.

The testimony shows that it was testified to by our opponents and is uncontradicted as to the work done, the excavations made and the houses built, and the actual living thereon by Chrismans, and no possession of any part of the Chrismans' (plaintiffs in error) claims by defendants in error. (See testimony of Canfield, manager for one of the defendants in error, at page 62 of the record.)

But counsel for our opponents wants to conclude from the so-called findings that possession, as a matter of law, exists when a notice is posted upon mineral land, claiming it as a mining location, and by monumenting the land claimed so that its boundaries can be readily traced. This, we urge, is in conflict with section 2320, Revised Statutes of the United States, which says no location shall be made until the discovery.

The so-called findings show we entered peaceably on January 1, 1897, and that we did work, and under section 2319, Revised Statutes of the United States, the lands of the United States are *free* and *open* to *exploration* until discovery, and we initiated our exploration at least, and therefore; under these very findings, we have the privilege there to remain until discovery and a proper marking, and no one man can claim more than 20 acres in one placer location, and the word *location* includes discovery and marking. In the case at bar Miller and seven associates marked out a piece of land, then the seven associates dropped out—conveyed to Miller—*then* Miller made discovery through his lessee. We say he could then have 20 acres only of *vacant* land, not 160 acres. He did not *mark* a 20-acre tract and how can the California court declare invalid sections 2319, 2320, and 2331; Revised Statutes of the United States, and adjudge in favor of Miller as owner and against Chrismans, even if the latter were only poor prospectors laboring for a "discovery."

At the very worst for Chrismans they had the rights of

citizens to explore under 2319, Revised Statutes, and at the very best on Miller's discovery of September, 1897, he could take 20 acres under 2331, Revised Statutes, and which he must mark under 2320, Revised Statutes. This the findings do not show he did, nor does the testimony.

But defendants in error urge that it is implied that one individual may take 160 acres of mineral land by one location. Can he? We say no, and now cite the authorities.

Twenty Acres, Only, to One Person.

The act of Congress of 1870 (16 Statutes at Large, chap. 235, p. 217) allowed a placer location of 160 acres to one individual, but the later general mining act of May 10, 1872, modified the original placer law by fixing a limit of 20 acres for each individual claimant, and this limitation to 20 acres was carried into the Revised Statutes, sections 2329–2330, December 1, 1873, and we cite against the "plainly implied" construction of counsel, at page 96 of his brief, McKinley *v.* Wheeler, 130 U. S., 630, 636; the regulations of the Land Department, circular of December 10, 1891, par. 61; Lindley on Mines (2d ed.), vol. I, secs. 447, 448, 448*a*, and section 450 *id.*, at p. 800, where Lindley says: "The statute simply inhibits the acquisition by an "individual of more than twenty acres by a single location;" also note at end of section 450, Lindley on Mines.

It is contrary to the provisions of sections 2330–2331, Revised Statutes of the United States, "for one person to cover "more than 20 acres of placer ground by one location."

Durant *v.* Corbin, 94 Fed., 382.

Also Snyder on Mines, vol. I, sec. 315, and note.

McDonald *v.* Montana Co., 14 Mont., p. 88; 35 Pac. Rep., 668.

The non-partizan construction of the statute by the above-named authorities is the one we hope that will have weight against the opinion of counsel for Miller.

Miller wanted 160 acres of placer land, and the State court decided that he should have it, in defiance of the act of Congress of *May 10, 1872, section 2330 of the* Revised Statutes of the United States.

What is the Issue, and What Did the State Courts Decide?

This suit is to quiet title, and the defendants are stated to claim an interest adverse to the plaintiffs, and ownership and actual possession at the commencement of the action, under the title of the owner, is alleged, and the prayer is that defendants have no right and that they be enjoined.

That was the issue tendered, and the findings must be limited to the ultimate facts pleaded. The only ultimate facts to be determined were those from which ownership could be deduced, and the *nisi prius* court did make findings from which it concluded that Miller was the owner and in the possession at the time suit commenced.

The supreme court of California held in San Diego *v.* Allison, 46 Cal., 163, that the fact that plaintiff was in posses sion did not entitle him to judgment; that possession is not title, but only evidence from which title may be presumed.

See also—

Adams *v.* Crawford, 116 Cal., 501.
Deffeback *v.* Hawke, 115 U. S., 392.
Thallman *v.* Thomas, 111 Fed. Rep., 277.
Ketts *v.* Austin, 83 Cal., 167.
17 Cyclopædia Pl. & Pr., p. 361.

The Issue is Not as Claimed by Defendants in Error.

But the facts are not found as the defendants in error contend.

In the sense claimed by defendants in error the review of this court can be had only upon the findings of the supreme court and of the superior court of California. Taking the

findings of both courts—and excluding the conclusions of law—and all of the questions that we have raised manifestly appear of record, and the case we contend should, because of those errors which we have pointed out, be reversed.

The supreme court of California states that all the parties claim by locations made under the mineral laws of the United States (Record, p. 121), and states the questions raised upon that page and page 126 of the record. The supreme court finds at page 122, folio 218, of the record and upon page 124 of the record as to the facts upon the discovery of oil made by Barieu and plaintiffs in error, and our entry was peaceable and sufficient of record. (See page 24, findings XIII and XIV, Record.)

DEFENDANTS IN ERROR IGNORE THE FINDINGS OF THE SUPREME COURT OF CALIFORNIA AND URGE CONCLUSIONS OF THE TRIAL COURT AS FINDINGS OF FACT.

The facts are misstated, and, further, all of the facts are not stated at page 68 of brief of defendants in error, nor is there anything in the record, as stated in said brief at page 78 thereof, that the entry of the Chrismans (plaintiffs in error) was surreptitious, and the trial court did not so state (see findings XIII and XIV, pp. 24–25 Record), but did of intervenors, whom we do not represent.

To begin logically at the commencement of this controversy, our position, first, is that the State courts were wrong in assuming any title in Miller and associates originating on December 31, 1896, for the reason that there was then a valid existing location on the premises, made by Barieu in 1895, which expired with the end of 1896. This Barieu location the State courts turned down as matter of *law* because there was no "discovery" under section 2320 of the Revised Statutes of the United States.

Section 2320 of the Revised Statutes of the United States says: "But no location of a mining claim shall be made "until the discovery."

Therefore *discovery* is a matter of law as much as certain marks upon the ground.

McKinley Mg. Co. *v.* Alaska Mg. Co., 183 U. S., 563, 570.

As to this subject the supreme court of California found and concluded:

"Upon the question of discovery the sole evidence is that "of Barieu himself. Giving fullest weight to that testimony "it amounts to no more than this, that Barieu had walked "over the land at the time he posted his notice and had dis- "covered 'indications' of petroleum. Specifically, he says "he saw a spring and 'the oil comes out and floats over the "'water in the summer time when it is hot. In June 1895, "'there was a little water with oil and a little oil with water "'coming out. It was dripping over a rock about two feet "'high. There was no pool: it was just dripping a little "'water and oil, not much water.' This is all the 'dis- "'covery' which it is even pretended was made under the "Barieu location, and we think it clear that such testimony "does not establish a discovery within the meaning of the "law."

The supreme court of California therefore finds that such facts as are above found are *mere indications* and are not a "discovery" within section 2320, Revised Statutes of the United States, and said court mistakenly cites Nevada Sierra Oil Co. *v.* Home Oil Co., 98 Fed. Rep., 673, as authority.

In arriving at the above conclusion the supreme court of California overrules the United States courts very generally. For instance, in Nevada Sierra Oil Company, 97 Fed. Rep., 681, 683, United States Circuit Judge Ross held as *matter of law* that such facts constituted a discovery. We repeat that Judge Ross, upon demurrer to a bill in equity which stated similar facts, overruled the demurrer, and thus held as a conclusion from those facts that a sufficient discovery was pleaded.

Judge Ross again in the 98 Fed. Rep., at pages 675-676, said:

"So, in respect to placer claims, if a competent locator act-
"ually finds upon unappropriated public land petroleum or
"other mineral in or upon the ground, and so situated as to
"constitute a part of it, it is a sufficient discovery, within the
"meaning of the statute, to justify a location under the law
"without waiting to ascertain by exploration whether the
"ground contains the mineral in sufficient quantity to pay."

The California supreme court also overrules the Supreme Court of the United States in Erhardt *v.* Boaro, 113 U. S, 527, where it is said:

"There must be *something* beyond a mere guess * * *
"such as the discovery of the precious metals *in it*, or in such
"*proximity* to it as to justify a reasonable belief in their ex-
"istence." (Italics ours.)

The truth of the matter is that the supreme court of California got mixed in the cases and mistook a decision of the same title by Judge Ross, where he held that seepages of oil upon an *adjoining* piece of land, but *not in suit*, was only an indication of oil *upon* land *in suit*, and *therefore* not a discovery. Nor was the case upon which the California court went wrong respecting the land claimed by the plaintiffs in error, as stated in the opinion. We concede that indications are not the thing itself, but oil is oil, and oil seeping or oil coming out of the ground is a physical fact. It is an indication of *quantity*, more or less, and probably more continuous than grains of gold in auriferous gravel which have broken down from the ledges to the sands and subjected to torrential seasonal washings, while oil, like the water spring, is continuous to its head; to follow leads to the body or end.

Our Defense Goes Beyond All Claims of Defendants in Error.

But we take a further position than that. For the sake of the argument only, grant that we are but poor prospectors who enter peaceably and seek to work upon this land to find minerals. The defendants in error have no title and cannot maintain in court an action against us to quiet our claims, because we are acting under the privilege given by Congress.

The defendants in error could take but twenty acres for one person, and they never even marked that, and his possession in the largest sense would only be of *such size as law* allows to a claim (English *v.* Johnson, 17 Cal., 108), to wit, twenty acres.

But we are mere prospectors; that is admitted solely for the sake of this argument.

Therefore we have the right, under the act of 1866, now section 2319, Revised Statutes of the United States, to enter upon the vacant mineral lands of this Government and explore for minerals and metals, and such land is vacant until discovery under section 2320, Revised Statutes of the United States.

If they had remained in actual possession under their claim of the premises, "the law is well settled that the mere occupancy of the public land and improvements thereon give no vested right therein. * * * The defendant * * * had made no such location as prevented the lands *being in law vacant.*"

Olive Co. *v.* Olmstead, 103 Fed. Rep., 572.

(The italics are ours.)

See, also, Erhardt *v.* Boaro, 113 U. S., 536, where Mr. Justice Field said:

"It would not initiate any right."

"It may be considered settled that mere possession alone "gives no right against a *bona fide* miner or prospector seek- "ing to acquire title to the land as a mining claim."

Snyder, vol. I, sec. 234, top page 202.

"In other words, where there is no valid location there "can be no rightful possession."

Id., end of sec., middle of page.

"By some of the earlier decisions it was held that one in "possession of public domain * * * was deemed right- "fully in possession. * * * But later decisions held, "and the rule today is, that a mere squatter upon the public "domain has not the right to maintain possession against "one peaceably seeking to effect the location of a mining "claim in a lawful way."

Snyder on Mines, vol. I, sec. 236, p. 204.

It must be treated as Government land up to the time of discovery.

Tuolumne Co. *v.* Maier, 134 Cal., 583–586.

In Burns *v.* Clark, 66 Pac. Rep., 12, it is held occupation as millsite gives no title to minerals.

If a party goes upon the mineral lands of the United States and either establishes a settlement or works thereon without complying with the requirements of the mining laws, and relies exclusively upon his possession or work, a second party who locates peaceably a mining claim covering any portion of the same ground, and in all respects complies with the requirements of the mining laws, is entitled to the possession of such mineral ground to the extent of his location as against the prior occupant, who is, from the time said second party has perfected his location and complied with the laws, a trespasser.

Lindley on Mines, vol. I, pp. 378–9, subdiv. 2 and 3.

Citing—

Horswell *v.* Ruez, 67 Cal., 111.

The peaceable adverse entry by the locator, coupled with the perfection of his location, operates in law as an ouster of the prior occupant.

Lindley on Mines (2d ed.), sec. 219, p. 379.

Citing—

Belk *v.* Meagher, 3 Mont., 65–80.

Location will *date from* the time discovery is made.

Lindley on Mines (2d ed.), sec. 330, quoting:

"The validity of the location * * * is made to de-"pend primarily upon the discovery. * * * (Sec. 2330 "R. S.) *Until* such discovery, *no* rights are acquired by loca-"tion. * * * (Other acts not imperative) * * * but "not so discovery, for it is upon *that act* that the very *life* of "a mineral location *depends;* and from the time of such dis-"covery *only* would the location be valid, provided, of "course, that *others* had not acquired rights therein."

Beals *v.* Cone, 27 Colo., 473.

(Italics are ours.)

See also Erwin *v.* Perigo, 93 Fed., 608.

Counsel for defendant in error relies upon the doctrine of Atherton *v.* Fowler, 96 U. S., 513. We have no criticism of that case. The rule is well understood in the West. The doctrine thereof was before the Supreme Court of the United States in Belk *v.* Meagher, 104 U. S., 279–284. Atherton *v.* Fowler treated of agricultural lands, while Belk *v.* Meagher was a mining case. It never has been the policy of our Government to initiate title through fraud or force.

We cite to the court Lindley on Mines (2d ed.), vol. I, sec. 218.

To carry the doctrine of Atherton *v.* Fowler to the extent claimed by counsel would prevent any entry upon a mine, would prevent the cutting down of too large a claim; still the courts have considered such cases.

The Supreme Court of the United States, in Del Monte Co. *v.* Last Chance (171 U. S., 55, 79–84), held that a junior mining locator might enter upon the surface of a senior valid existing location and lay surface lines of the junior location across the senior location so long as he did so peaceably.

The circuit court of appeals for the ninth circuit held to a like doctrine in Empire State *v.* Bunker Hill, 114 Fed. Rep., 417, 419, and the last-named court went further in this case, and said the junior could establish his surface corners and lines upon patented senior locations so long as it was done openly and peaceably.

See also to same effect:

Bunker Hill Co. *v.* Empire State, 109 Fed., 538, 542.
Hidee Lode, 30 Land Dec., 420.
Mono Fraction, 31 L. D., 122.
Alice Lode, 30 L. D., 481.

If the discovery point is lost, by a patent covering it being granted to another, loses the remainder of the claim.

Gevillim *v.* Donellan, 115 U. S., 45–50; 5 Sup. Ct. Rep., 1110.

If location is made larger that the law allows the excess is invalid.

Richmond *v.* Rose, 114 U. S., 576, 580; 5 Sup. Ct., 1055.
Glacier Mt. *v.* Willis, 127 U. S., 471–481; 8 Sup. Ct., 1214.

Worthless for any purpose—if too large.

Ledoux *v.* Forester, 94 Fed., 600.
Hansmith *v.* Butcher, 4 Montana, 299.

How can there be an attack upon a paper location?

How can there be a forfeiture or a relocation under the present theory of counsel for defendants in error?

By what means were the last-cited cases gotten before a court?

Counsel asserts that the putting up of monuments around and posting a notice with eight signatures upon a 160-acre piece of land and thereafter seven of these men conveying to one and *then* the one making the discovery is good as to 160 acres, and the supreme court of California seemed to take that view of it upon the theory suggested that it was the same as a co-owner failing to do his share of the annual labor or assessment-work under section 2324, Revised Statutes of the United States.

The two propositions are not similar. There is a vested right—there is title—in the cases provided for under section 2324, Revised Statutes of the United States. In the other case there is no right or title to be affected except the prospector. He who drops out loses. No one else is hurt. The man who stops exploring or prospecting can get no 20-acre tract. It is his loss and that of no one else.

Section 2324 requires $100 to be expended each year upon mining locations or else they are forfeited. To provide against one co-owner standing back without expense and making the other claimants make all expenditures Congress planned to have the man who would not put up forfeit to his co-owner, who did protect the property.

Therefore the defense asserted by counsel and misapplied by the supreme court of California in the case at bar is not a logical one.

In conclusion, we beg leave to say that the other questions at issue are considered at length in our other briefs now on file, and we most respectfully submit that the judgment should be reversed.

J. C. Campbell,
W. H. Metson,
Counsel for Plaintiffs in Error.